

JUDGE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	NO. CR15-029RAJ
	)	
Plaintiff,	)	MOTION FOR COMPASSIONATE
	)	RELEASE PURSUANT TO 18 U.S.C. §
v.	)	3582(c)(1)(A)
	)	
BRIAN FARRELL,	)	Noted for: April 23, 2021
	)	
Defendant.	)	

**I. INTRODUCTION AND REQUEST FOR RELIEF**

Brian Farrell, through Assistant Federal Public Defender Nancy Tenney, moves this Court for compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on the “extraordinary and compelling reasons” presented by FCI Sheridan’s failure to treat his serious medical conditions. Mr. Farrell is not a danger to any other person or the community, and the U.S.S.G § 3553(a) factors all weigh in favor of Mr. Farrell’s release.

**II. PROCEDURAL HISTORY AND STATUS**

On June 3, 2016, Mr. Farrell was sentenced to 96 months of imprisonment followed by three years of supervised release following his conviction for Conspiracy to Distribute Cocaine, Heroin, and Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1). Dkt. 74. After over a year on pretrial release without incident, Mr. Farrell was allowed to self-report to serve his sentence at the camp at FCI Sheridan. *Id.*

1 at 2. His scheduled release date is April 22, 2022, and he typically would be eligible  
2 for placement at a halfway house in October of 2021.

3 **A. The 30-day Administrative Remedy Period has Expired.**

4 On January 25, 2021, Mr. Farrell submitted a request for compassionate release  
5 to the Warden of FCI Sheridan. *See* Ex. A. The Warden denied the request on  
6 February 4, 2021 and no further action has been taken by the Bureau of Prisons. *See*  
7 Ex. B.

8 **B. The Bureau of Prison's Failure to Treat Mr. Farrell's Serious Heart**  
9 **and Lung Conditions Warrants Compassionate Release.**

10 This Court should grant Mr. Farrell compassionate release because he is  
11 not receiving necessary medical treatment at FCI Sheridan and, if released, he  
12 could access that treatment in the community.

13 In March of 2020, Mr. Farrell was hospitalized due to a severe viral illness  
14 that was never identified. Ex. C (medical records filed under seal). He  
15 experienced shortness of breath, nausea, chills, light-headedness, diarrhea and a  
16 highly-elevated heart rate. *Id.* Although he received a negative result on a  
17 COVID-19 test at that time, Mr. Farrell has since had additional COVID-19 tests  
18 and now questions whether that initial test was administered properly. In any  
19 event, Mr. Farrell still has not recovered from his illness. He continues to suffer  
20 fatigue, shortness of breath and an abnormal heartbeat. Ex. D (medical records  
21 filed under seal). On July 17, 2020, Mr. Farrell was seen by an EMT paramedic  
22 for shortness of breath, intermittent cough and occasional heart palpitations. *See*  
23 Exhibits E and F. Although the paramedic recommended he see a nurse  
24 practitioner or physician assistant, Mr. Farrell saw no properly licensed  
25 practitioner for over a month. *Id.* Dr. Marc Stern, a specialist in correctional  
26 health care who reviewed Mr. Farrell's medical records, notes in his attached

1 declaration that the issues Mr. Farrell presented “could have been related to a  
2 number of serious medical conditions and failure to address them immediately  
3 could have resulted in serious harm.” Ex. E at 1-2.

4 On August 10, 2020, Mr. Farrell finally saw a licensed physician. Ex. D.  
5 The physician discovered that Mr. Farrell had a heart murmur, as well as fatigue  
6 and shortness of breath, all stemming from his earlier respiratory illness. *Id.* In  
7 addition to prescribing medication for Mr. Farrell’s heart and lungs, the physician  
8 referred Mr. Farrell to a cardiac specialist for an echocardiogram and complete  
9 evaluation. *Id.* Despite ongoing requests, as of this filing over eight months later,  
10 Mr. Farrell still has not seen a cardiologist or undergone an echocardiogram. *See,*  
11 *e.g.,* Ex. E at 2; Ex. F. Because his symptoms have the potential to result in  
12 medical conditions which place him at a significant risk of serious harm, Mr.  
13 Farrell requests compassionate release so that he may access appropriate medical  
14 care in the community.

#### 15 **C. Mr. Farrell’s Release Plan**

16 If released, Mr. Farrell intends to return home to live with his parents. As  
17 explained in their attached letter, Mr. Farrell’s parents reside in their own home  
18 in Longview, Washington and they are prepared to assist their son so that he can  
19 access to proper medical care once released. *See* Ex. G.

### 20 **III. THE FIRST STEP ACT AUTHORIZES MR. FARRELL TO BRING THIS** 21 **MOTION, AND THE COURT HAS JURISDICTION TO GRANT IT.**

#### 22 **A. This Court is not bound by U.S.S.G. § 1B1.13’s policy statement** 23 **governing what may be considered “extraordinary and compelling”** 24 **reasons for a sentence reduction or § 1B1.13(2)’s free-standing** 25 **requirement that the defendant no longer pose a danger to the** 26 **community.**

This Court has the authority to reduce Mr. Farrell’s sentence based on the  
extraordinary and compelling circumstances presented. First, it has jurisdiction to hear

1 this motion because “the statutorily required 30-day period has expired with no action  
 2 by the warden of his facility.” *United States v. Anello*, No. 2:12-cr-00131-RAJ, 2020  
 3 WL 3971399, at \*3 (W.D. Wash. July 14, 2020). Second, the changes to 18 U.S.C. §  
 4 3582(c)(1)(A) made by the First Step Act have finally vested the Court with the  
 5 authority to decide when extraordinary and compelling circumstances warrant a  
 6 sentence reduction. The Ninth Circuit has recently joined the unanimous rulings of the  
 7 Tenth, Fourth, Sixth, Second and Fifth Circuits<sup>1</sup> in holding that there is no applicable  
 8 policy statement governing compassionate release motions filed by defendants under  
 9 the recently amended § 3582(c)(1)(A), and thus, this Court has the full authority to  
 10 consider *any* extraordinary and compelling reason for release that a defendant might  
 11 raise. *See United States v. Aruda*, -- F.3d --, No. 20-10245, 2021 WL 1307884, at \*4  
 12 (9th Cir. Apr. 8, 2021) (vacating and remanding district court’s denial of compassionate  
 13 release because the district court treated the Sentencing Commission’s statements  
 14 contained in U.S.S.G. § 1B1.3 as binding). Thus, on a defendant-initiated motion under  
 15 the First Step Act, as here, the defendant must show that they have extraordinary and  
 16 compelling reasons to warrant their release, and the Court must consider the sentencing  
 17 factors under 18 U.S.C. § 3553(a).

18 Nor is this Court bound by U.S.S.G. § 1B1.3(2)’s free-standing requirement  
 19 that a defendant show he no longer poses a danger to the community. *See United States*  
 20 *v. Grimes*, No. CR 11-5509-BHS, 2021 WL 319404, \*2 (W.D. Wash. Jan. 26, 2021)  
 21 (ruling Sentencing Commission’s policy statement also not binding when considering  
 22 public safety). In *Grimes*, the Honorable Judge Benjamin Settle granted the defendant’s  
 23 motion for reconsideration, ruling that § 1B1.3’s public safety requirement, which  
 24 placed the burden on a defendant to show he was not a danger to the community, was  
 25 also not binding in defendant-initiated motions given the unanimous circuit court

26 <sup>1</sup> *See United States v. Shkambi*, -- F.3d--, --, No. 20-40543, 2021 WL 1291609, at \*4 (5th Cir. Apr. 7, 2021); *United States v. McGee*, No. 20-5047, -- F.3d --, --, 2021 WL 1168980, at \*12 (10th Cir. Mar. 29, 2021); *United States v. McCoy*, 981 F.3d 271, 281–84 (4th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 234–37 (2d Cir. 2020).

1 decisions holding the same when considering a defendant's extraordinary and  
 2 compelling reasons. Judge Settle pointed out that "[t]hough these decisions primarily  
 3 discuss whether the Sentencing Commission's policy statement is binding when  
 4 considering a defendant's extraordinary and compelling reasons, courts have also  
 5 interpreted the First Step Act's amendments to mean that the policy statement is not  
 6 binding when considering public safety." 2021 WL 319404, at \*2. Applying this  
 7 reasoning, Judge Settle ruled he had erred in placing the burden on defendant to show  
 8 he was no longer a risk to public safety as a freestanding requirement. *Id. See also*  
 9 *United States v. Vargas*, No. 88-CR-32 (VEC), 2020 WL 6886646, at \*9 (S.D.N.Y.  
 10 Nov. 24, 2020) (courts no longer need to abide by Sentencing Commission's policy  
 11 statement, requiring that it consider whether defendant was "a danger to the safety of  
 12 any other person or to the community."); *United States v. Harris*, No. 15-CR-0445,  
 13 2020 WL 5801051, at \*2 (S.D.N.Y. Sept. 29, 2020) ("[W]hen assessing a motion  
 14 brought directly by an imprisoned person rather than by the BOP, the Court is  
 15 constrained neither by U.S.S.G. § 1B1.13's enumeration of extraordinary and  
 16 compelling reasons, nor by its freestanding requirement that the defendant seeking  
 17 release not pose any danger to the community.").

18 Rather, "[p]ublic safety is one of the § 3553(a) factors the Court considers[,]"  
 19 not a required showing "separate from the public safety consideration contemplated by  
 20 the § 3553(a) factors." *Id.* And while Judge Settle acknowledged that "[i]t cannot be  
 21 argued that Grimes poses no risk to the safety of the community," after balancing the §  
 22 3553(a) factors, the court concluded Grimes was entitled to compassionate release. *Id.*  
 23 at \*2.

24 **B. Extraordinary and compelling circumstances warrant a reduction in**  
 25 **Mr. Farrell's sentence.**

26 Similarly here, Mr. Farrell is entitled to a sentence reduction. The Bureau of  
 Prison's failure to follow its own medical advice and properly treat Mr. Farrell's  
 potentially serious medical conditions presents extraordinary and compelling  
 circumstances that justify a sentence reduction. *See, e.g., United States v. Carter*, No.

1 15-211 MJP (W.D. Wash. Jan. 20, 2021)(granting compassionate release in part  
 2 because “lack of consistent medical monitoring” at FCI Sheridan put defendant’s  
 3 “overall health at risk”); *United States v. Arreola-Bretado*, 445 F.Supp.3d 1154 (S.D.  
 4 Cal. 2020) (rejecting government’s argument that defendant “has failed to show that her  
 5 treatment in custody is insufficient such that it warrants early release” and finding  
 6 extraordinary and compelling reasons existed based on defendant’s ailments including a  
 7 cardiac murmur and Graves Disease, and that “she would have a higher level of medical  
 8 care outside the facility”); *Samy v. United States*, No. 16-20610-1, 2020 WL 1888842,  
 9 at \*1 (E.D. Mich. Apr. 16, 2020) (explaining that “the prison environment only  
 exacerbates [the defendant’s] ailments” and granting compassionate release).

10 **C. The relevant § 3553(a) factors weigh strongly in favor of release.**

11 Here, the facts the Court must weigh under 18 U.S.C. § 3553(a) favor release.  
 12 The statute directs that the Court impose a sentence “sufficient, but not greater than  
 13 necessary, to comply with the purposes set forth in paragraph (2)” of the statute. 18  
 14 U.S.C. § 3553(a). Paragraph 2, in turn, provides that the Court must consider “ “the  
 15 need for the sentence imposed” to: (1) “reflect the seriousness of the offense, promote  
 16 respect for the law, and provide just punishment for the offense”; (2) “afford adequate  
 17 deterrence to criminal conduct”; (3) “protect the public from further crimes of the  
 18 defendant”; and (4) “provide the defendant with needed educational or vocation  
 19 training, medical care, or other correctional treatment in the most effective manner.” *Id.*

20 Each of these factors favors release. While Mr. Farrell acknowledges that his  
 21 offense was serious, he has now served over 75% of his 96-month sentence and will  
 22 become eligible for halfway house placement in 6 months. The time he has already  
 23 served reflects the seriousness of the offense and will adequately deter others from  
 24 committing similar offenses. To the extent that the statute requires punishment for the  
 25 offense, Mr. Farrell has been punished significantly. He has spent much of his prison  
 26 time ill, including being hospitalized in March of 2020 due to a viral illness, which was  
 never identified. He has suffered from lingering and constant effects from his health

1 conditions, including shortness of breath, nausea, chills, light-headedness, diarrhea and  
2 a highly-elevated heart rate. And, he continues to suffer fatigue and an abnormal  
3 heartbeat. Ex. D (medical records filed under seal). Once released, Mr. Farrell faces  
4 three years of supervised release and he will forever live as a convicted felon. Further  
5 prison time is not necessary to punish Mr. Farrell or deter him from future criminal  
6 conduct.

7 Moreover, Mr. Farrell is not a danger to the community and thus public safety  
8 does not support continued confinement. *See* 18 U.S.C. § 3553(a)(2)(C). Mr. Farrell  
9 has maintained a good record of conduct throughout his term of confinement, with only  
10 one very minor infraction back in 2017. *See* Ex. F. He has been housed at the  
11 minimum-security camp and his PATTERN risk assessment is minimum. Mr. Farrell  
12 has no previous criminal history aside from this case, and he has never engaged in any  
13 violent activity. *See* Presentence Report prepared May 20, 2016. Following his initial  
14 arrest, Mr. Farrell lived with his parents on pretrial supervision for well over a year  
15 without incident before self-surrendering to serve his sentence. During that time he  
16 completed drug treatment programs to address his opiate addiction which was the  
17 driving factor for his criminal activity. Mr. Farrell's subsequent years of sobriety and  
18 completion of the RDAP treatment program while in prison, combined with his plan to  
19 again live with his parents, ensure that he will not pose any risk danger to the  
20 community upon release.

21 Finally, perhaps the most relevant factor is that Mr. Farrell is not getting the  
22 medical care he needs at FCI Sheridan. Thus, the "need for the sentence imposed . . . to  
23 provide the defendant with . . . medical care . . . in the most effective manner" is not  
24 met by Mr. Farrell's further imprisonment. *See United States v. Connell*, -- F.Supp. 3d -  
25 -, --, No. 18-cr-00281-RS01, 2020 WL 2315858, at \*6 (N.D. Cal. May 8, 2020)  
26 ("Adequately caring for someone with underlying health conditions like Connell's  
entails reducing that individual's risk of exposure to COVID-19; keeping Connell at  
Lompoc is not the "most effective manner" of mitigating that risk" nor is he likely to  
"get the medical care he needs at Lompoc during the midst of the pandemic."). In



1 contrast, once released, Mr. Farrell's parents plan to assist him in accessing proper  
2 medical and mental health care in the community. Ex. G. Their efforts will no doubt  
3 be aided by his father's prior healthcare experience and his mother's knowledge from  
4 years in nursing. *Id.* Given the serious nature of his medical conditions which are  
5 being ignored, this factor strongly supports a sentence reduction.

#### 6 IV. CONCLUSION

7 Because his worsening medical conditions remain untreated at FCI Sheridan and  
8 he has a stable release plan where he will pose no danger to the community, Mr. Farrell  
9 respectfully requests this Court grant his motion for compassionate release.

10 Dated this 13th day of April, 2021.

11 Respectfully submitted,

12 *s/ Nancy Tenney*

13 Assistant Federal Public Defender

14 Attorney for Brian Farrell